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WHAT'S INSIDE:

- * Analysis of Impediments to Fair Housing
- * Housing Discrimination and Persons with Developmental Disabilities
- * Around the Nation
- * Current Human Rights Commission Cases
- * Online Resources

ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE COMPLETED

A new study of the impediments to fair housing choice in Vermont has just been completed. The study was supported by funds from the U. S. Department of Housing and Urban Development previously allocated to the Vermont Human Rights Commission, who administered the effort in concert with the Vermont Department of Housing and Community Affairs. The "Analysis of Impediments to Fair Housing Choice" was conducted by J-Quad and Associates of Dallas, Texas, a consulting firm with extensive experience in reviewing fair housing around the nation. The study presents an overview of the current and future housing situation in Vermont, with a focus on looking at the factors that prevent Vermonters from obtaining equal access to housing opportunities in the state. This type of state-wide study is mandated by the Department of Housing and Urban Development as part of its granting process for housing programs.

To complete the Analysis of Impediments, J-Quad conducted an extensive survey of the demographics of the Vermont housing market, in both sales and rental. The consultants conducted focus group discussions in Burlington, Montpelier, Rutland and Brattleboro, meeting with housing providers, industry representatives, housing consumers and advocacy and support groups to get a full picture of the current state of housing in Vermont. Using this information, the study has identified nine specific impediments to fair housing choice in Vermont, and has provided recommendations for remedial actions to address these problems.

The nine areas of impediment to fair housing choice identified by the study are as follows (not in order of importance):

1. Lack of Affordable Housing

The study determined that one of the most serious problems in Vermont is a lack of affordable housing. A study of housing needs conducted by the Vermont Housing Finance Agency indicates that the current supply of affordable housing units falls short

HOUSING DISCRIMINATION AND PERSONS WITH DEVELOPMENTAL DISABILITIES

Introduction

In 1999 the U. S. Supreme Court decided the landmark case of *Olmstead v. L. C.* (527 U.S. 581). In *Olmstead*, the Court ruled that under Title II of the Americans with Disabilities Act, states are required to place persons with mental disabilities in community settings rather than in institutions when the state's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others with mental disabilities. The plaintiffs in *Olmstead* were two persons with developmental disabilities. Their victory in Court assured that such persons cannot be confined in a psychiatric institution or other restrictive setting if they are able to reside in a less restrictive community placement.

The *Olmstead* decision has had a broad impact on both the housing industry and local and municipal governments. The primary impact of *Olmstead* is that persons with developmental disabilities who are able to live independently need to find housing in community settings. Such settings include group homes, assisted living facilities, apartments set aside for the elderly or disabled, or—most importantly—apartments available to the general public in the open housing market.

Under *Olmstead*, more persons with developmental disabilities are moving into the general housing market. And while *Olmstead* has opened the door to more housing opportunities for developmentally disabled individuals, it has also created situations where developmentally disabled persons may be exposed to housing discrimination, both from housing providers and from neighbors. It is vital, then, for persons with developmental disabilities, and those who assist them, to be aware of their rights under the Fair Housing laws. It is also important for housing providers and municipal leaders involved with housing issues to be sensitive to the specific types of housing discrimination that might arise around developmental disabilities, to help prevent such incidents before they arise.

Non-Discrimination in Rental

The most basic issue here is that a housing provider may not refuse to sell or rent a dwelling to a



ANALYSIS OF IMPEDIMENTS... continued on page 2

HOUSING DISCRIMINATION... continued on page 4

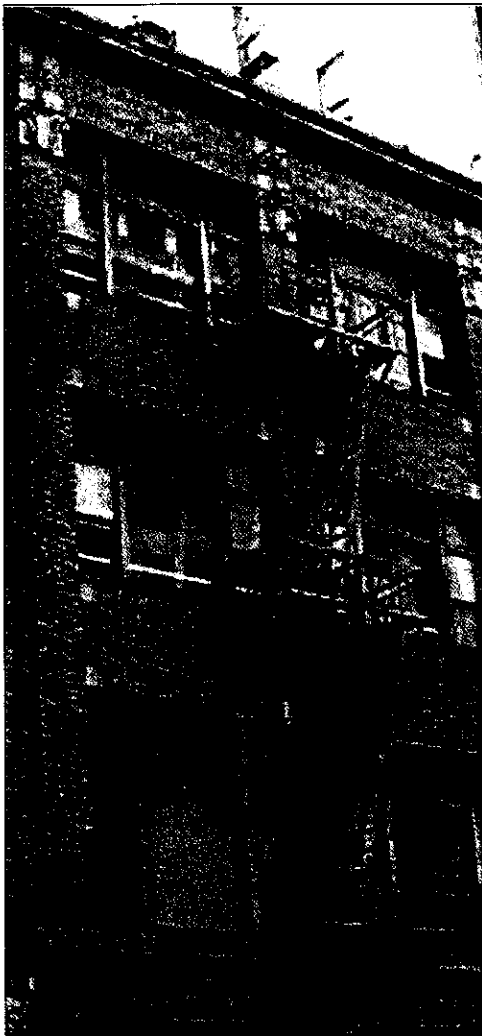
of demand by nearly 21,000 units. As a result, there is great demand on the limited supply of affordable housing, in both rental and sales markets. As anyone who has looked for housing in Vermont knows, affordable apartments and homes are snapped up almost as soon as they are put on the market. One result of this situation is that there is an increased opportunity for housing discrimination to occur, and to go undetected. With dozens of applicants for a single apartment, a landlord is likely to give the apartment to the "safest" applicant—in other words, the person who is not a member of a minority group. If members of protected classes are being turned away from housing opportunities, the landlord can simply say that the apartment was already rented, a credible claim given the tight market. Housing seekers, exhausted from their futile attempts to find an apartment, are less likely to make the effort to report a possible fair housing violation, even when they feel one has occurred. While lack of affordable housing does not necessarily create discrimination, it creates a fertile ground for acts of discrimination to occur, and for them to go unreported.

In response to this problem, the report recommends that the State create greater incentives for developers to initiate new affordable housing projects, and that the State provide further funding to support affordable housing projects and their development.

2. Poor condition of rental housing units

The report found that Vermont's overall housing stock is aging, and that many units are in substandard condition. In particular, many of Vermont's lower-income areas have a very old housing stock, and most municipalities do not conduct regular inspections of rental properties. As with lack of affordable housing, the deteriorating condition of rental units does not in itself create discrimination. However, members of marginalized communities, who lack the resources to obtain new units (or who are consciously turned away from them) tend disproportionately to occupy these substandard units. The impact is especially hard on those who receive Section 8 housing assistance. Some landlords attempt to avoid the Section 8 program, because they fear that their units will not meet Section 8 inspection standards, and they will be forced to put money into repairs. As a result, the already tight rental market is made even tighter by the lack of Section 8 qualifying apartments, and people who are eligible to receive housing assistance are unable to find an appropriate unit to occupy.

The study recommends expanding the municipal inspection of rental units to ensure minimum quality standards, and the creation by the State of low-interest loans so that landlords can invest



3. Lack of accessible housing

Federal fair housing laws require that all ground-floor units in multi-family dwellings (apartments and condominiums) built after 1992 meet basic standards of accessibility for persons with mobility impairments. These standards include the ability to get a wheelchair from parking spaces into the apartment, wheelchair accessibility in the apartment, especially kitchens and bathrooms, ability to install grab bars for toilets and bathtubs, switches and controls at reachable levels, and accessible common areas. Unfortunately, Vermont's statutes are not always clearly in line with these standards, and there is a general lack of clarity as to which State agency is charged with enforcing these regulations. As a result, disability advocates reported that many multifamily dwellings built in Vermont after 1992 do not meet the federal guidelines. This situation leads to an overall shortage of accessible housing in the state, and may create situations where tenants, as they age, may be forced to leave their homes if they suddenly require an accessible unit.

The report recommends that the state legislature amend the state fair housing laws to reflect the federal accessibility standards, and to clarify and expand enforcement of these regulations for new housing developments.

4. Large-building lot zoning

The report found that many Vermont municipalities are zoned primarily for single-family residences with large lot requirements. The reasons for such zoning may be to prevent excess density and retain a rural character for a town, or to allow for large enough lots to sustain septic systems where there is no municipal wastewater system in place. Whatever the reason, the effect is that larger lot size tends to increase the cost of a building lot, thus putting home sales further out of reach for low-income Vermonters. Large lot zoning also tends to decrease the possibility for

higher-density, lower-cost housing such as apartment buildings and mobile homes. This situation only increases the pressure on the affordability of housing, with the effects on fair housing choice as described above.

The report recommends that local and state planners look for ways to encourage building and zoning of dwellings on smaller lots, especially in towns that depend on septic systems and well water.

5. Restrictive zoning

The report notes that some towns in Vermont have zoning regulations that prohibit, or heavily discourage, anything but high-cost single-family homes. Some towns have no zoning provision

for multi-family dwellings of any kind, or allowances for mobile home developments. These zoning regulations have the effect of excluding from a town all those in need of affordable housing, with a disproportionate impact on those in minority groups, families with children, and those receiving public assistance. A recent change in Vermont law regarding municipal planning requires all town zoning regulations to permit multi-family dwellings and mobile home developments, but some towns have not yet come into meaningful compliance with this statute. A recent New Hampshire court case found that restrictive zoning of this nature can constitute a violation of fair housing law, specifically in the restrictions it places on families with children.

The report recommends that the State strongly enforce the new Vermont law regarding multifamily dwellings and mobile home parks, to make sure that affordable housing is available throughout the state.

6. Lack of awareness of fair housing rights

It was a consensus of the focus groups conducted by the study that the general population of Vermont was not fully aware of the rights and obligations conferred by the state and federal Fair Housing Acts. Many landlords are aware of some of their obligations, but other apartment owners, especially those who own only a few units, may not have access to the information they need to comply with the law fully. Similarly, while some groups of Vermonters are aware of their rights under the law, many others are not able to recognize an act of discrimination when it happens to them. And while there is some awareness of the law itself, many may not know what to do when they encounter discrimination, and how to seek redress.

The report recommends that the Human Rights Commission and the Department of Housing and Community Affairs engage in an extensive and comprehensive public information campaign, aimed both at housing providers and at the general public of housing consumers. The report also recommends that there be ongoing funding from the state to establish ongoing public information resources to maintain public awareness of rights and obligations under the law.

7. Lack of enforcement of Fair Housing requirements for federal Community Development Block Grant (CDBG) funds

The report notes that a municipality that receives federal CDBG funds under grants administered by the Department of Housing and Community Affairs is required to show that the town "affirmatively furthers fair housing." At present, however, all that is required for these grants is that the town check off a box indicating that it affirmatively furthers fair housing, without showing any

actual action taken toward improving fair housing choice within the community. As a result, there are lost opportunities for strengthening fair housing opportunities within the State, or for further education and training in this area.

The report recommends increased enforcement of this federal requirement, including a more specific list of sample actions that may be taken by a grantee to affirmatively further fair housing.

8. Discrimination in Sales and Rental markets

The consultants surveyed the number of fair housing complaints filed in Vermont over the last three years, and court cases in fair housing that have either gone to trial or settled out of court. The study also looked at several testing studies done by the Fair Housing Project of the Champlain Valley Office of Economic Opportunity. These studies shows persistent evidence of ongoing fair housing violations in both the sales and rental markets. For example, the most recent study showed that persons of Middle Eastern origin who attempted to rent an apartment in Vermont encounters noticeable housing discrimination (outright refusal to rent, phone calls not returned, discouraging statements, extra barriers created before renting) in fifty percent of the tests conducted. Based on this information, the report concludes that housing discrimination is an ongoing problem in Vermont, and that current enforcement resources are not sufficient to address the full scope of the problem.

The report recommends expanding the authority of the Human Rights Commission to conduct tests for housing discrimination and to enforce the law based on these tests. The report also recommends that testing and enforcement be conducted by other agencies, and that such testing be used to increase enforcement of Fair Housing laws.

9. Lack of public transportation

The report notes that there is a general lack of public transportation in Vermont outside of central Chittenden County and a few other larger-population areas. Because of this acknowledged deficit, many people, especially disabled and low-income persons, are severely limited in their housing choices because of the need to get to work, shopping and other necessities. Again, this factor does not itself create housing discrimination, but puts added pressure on those in minority and low-income communities in an already stressed housing market.

The report recommends an increase in support by the State for public transportation, especially in rural areas.

If you would like to see the full text of the report, you may contact the Vermont Human Rights Commission, 135 State Street, Drawer 33, Montpelier, Vermont 05633-6301, tel. 800-416-2010, tty 877-294-9200. The report is also available online at www.dbca.state.vt.us/Admin/Publications.htm.



AROUND THE NATION

The following are summaries of some recent Fair Housing cases around the nation:

- The Strafford County Superior Court in New Hampshire issued a ruling that the Town of Ossipee had violated state land use law by overly restrictive zoning. The court determined that Ossipee's zoning regulations effectively preclude the construction of affordable multi-family apartment complexes, and specifically prevents the construction of one such proposed complex in the town. The court determined that the zoning restriction violated fair housing law by disproportionately excluding families with children, and that the town was not carrying a fair share of affordable housing units in the region. (This case, and its implications for Vermont communities and their zoning regulations, will be discussed at greater length in an upcoming issue of the Vermont Fair Housing News.)
- A Minnesota landlord agreed to pay \$400,000 to sixteen former female residents and \$25,000 to the United States government to settle a sexual harassment claim brought by the U. S. Department of Justice. The complaint, filed in 2003, alleged that the landlord had entered the apartments of the female tenants without notice and made sexual advances toward them, threatening to evict them if they did not comply with his wishes. The same landlord has paid over \$200,000 to other former tenants who filed suit against him privately, alleging the same behavior.
- The U. S. Department of Justice has settled a suit filed against the city of Agawam, Massachusetts. The suit alleged that the city had refused to allow a proposed housing project for farm workers in the area. The settlement includes a total payment by the city of \$260,000, including payments to the farm, to the workers (mostly from the Caribbean) who were unable to obtain housing, and a civil penalty.
- A jury in a federal court in Michigan has awarded \$314,000 to a woman with a mental disability whose apartment cooperative refused to allow her to keep a psychiatric support dog in her apartment. The case may be appealed to the 6th Circuit Court of Appeals.
- The Rhode Island Attorney General settled a suit filed against a condominium association. The suit alleged that the association refused to allow a resident with a disability to install a ramp to allow access into the condo unit. The settlement includes a payment of \$15,000 to the unit owner.

HOUSING DISCRIMINATION... continued from page 1

person with a developmental disability specifically because of that disability. If a developmentally disabled person meets the criteria for rental that the landlord applies to all other renters, such as ability to pay or good references, then the landlord must consider that person equally with other applicants. It is not permissible under Fair Housing law to require extra information, such as a reference from a doctor, before renting to a person with a developmental disability (unless the issue of direct threat arises; see below). A landlord or other housing provider may not ask applicants whether they have a disability, or inquire into the nature or severity of their disability. The landlord should also not make any statements toward a person with a disability intended to discourage them from renting, such as statements that the person "might be more comfortable living somewhere else," or that the apartment building "is not a good fit for people like you." In general, then, persons with developmental disabilities should be treated in the same manner as all other applicants for housing, and their applications should be evaluated under the same criteria as all other applications. Similarly, a housing provider may not discriminate against a person with a disability because that person relied upon the assistance of another person, such as a full- or part-time attendant or home care professional.

Stigma and Harassment

Persons with developmental disabilities are frequently subjected to social stigmas that often go far beyond the challenges posed by their disabilities. When landlords or neighbors learn that a person has a developmental disability, they may become suspicious of that person, withdraw from them, treat them as a child or an incompetent, or otherwise stigmatize them. The person with a developmental disability often faces substantial challenges negotiating the requirements

of apartment living, and such stigmatization does little to improve the situation, and can make it much worse. Often it is difficult for both sides of a housing dispute to come to an understanding, because the parties don't have a comfortable language for discussing these issues, or because of lack of understanding of the needs of the people on both sides of a problem.

In particular, a person with a developmental disability living in a community setting may be subjected to acts of harassment from neighbors. Harassment might begin with a legitimate dispute. For example, a person with a developmental disability might take longer to learn the rules of an apartment complex: when and where to deposit trash, quiet hours, and the like. This situation can lead easily to disputes between the developmentally disabled person and neighbors. If the person with a developmental disability lacks skills in negotiating such disputes, the conflict may escalate, leading to name-calling based on the person's disability or other retaliatory actions. If neighbor-to-neighbor disability-based harassment becomes severe or pervasive, a violation of Fair Housing law might occur. The harasser might become individually liable for a Fair Housing claim. And, if the landlord becomes aware of the harassment, and does nothing to address the problem, the landlord may also thereby commit a violation of the Fair Housing Act.

Situations of this nature are often complicated by the fact that the person with a developmental disability may not know that they should report acts of harassment, or to whom they should be reported. The developmentally disabled person may not have the means or the skills to advocate for their rights in such situations. Therefore, caregivers and family members should be aware of the role they can play in helping to address harassment situations. When harassment happens, it is important to report each incident to the landlord or similar authority, and to document the date, time and nature of each

HOUSING DISCRIMINATION... continued on page 5

incident so that a pattern of harassment can be determined. In a recent Human Rights Commission case, for example, a developmentally disabled tenant reported to the Commission that he was being harassed daily by a maintenance worker calling him "retard" and other derogatory names. The tenant, however, only reported one such incident to the landlord, who immediately spoke to the worker (who denied the allegation) and told him to refrain from making such comments. The tenant stated that the harassment continued, but since he did not report any further incidents to the landlord, the landlord had no legal obligation to respond further, and it was not possible for the Commission to prove that unlawful discrimination had occurred.

Requests for Reasonable Accommodations

As with all persons with disabilities, a person with a developmental disability has a right to receive a reasonable accommodation in order to provide that person with an equal opportunity to use and enjoy a dwelling. An accommodation request might include receiving a lease or other notices in an alternate format, or having an extra parking space for a caregiver or attendant. If the requested accommodation does not impose an undue burden on the housing provider, or ask the provider to provide services not within the normal scope of the housing, then the provider is required to provide the accommodation. If the provider does not believe that the accommodation requested is reasonable, then the provider is usually obligated to engage in a good-faith dialogue with the disabled person in an attempt to identify an alternative to the accommodation request.

One important point for housing providers to note is that there is no specific requirement that a person use the words "reasonable accommodation" in making an accommodation request. Nor is a person required to fill out a particular form, or even necessarily make a formal request. This point is especially important for persons with cognitive disabilities, whose ability to fill out a particular form or use certain language in making an accommodation request may be limited. According to Department of Housing and Urban Development regulations, any time a person with a disability requests any kind of change in policy or procedure to assist their disability situation, no matter what the format of the request, the housing provider should treat the inquiry as a request for a reasonable accommodation and proceed accordingly. Another person may also make the accommodation request on behalf of the disabled person.

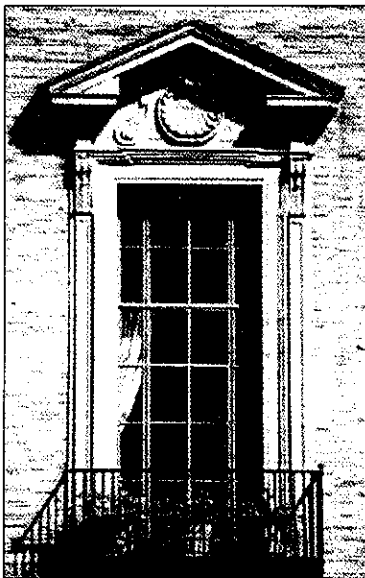
Perhaps the most controversial subject regarding reasonable accommodation requests is the topic of support animals for people with emotional and developmental disabilities. Such requests have created a substantial amount of controversy, and have led to some conflicting court decisions which are too complex to discuss within the scope of this article. If a person with a developmental disability requests to have a service or support animal, that request should be treated as any other accommodation request. As in most support animal situations, the housing provider is allowed to request documentation from a medical professional asking what services the animal performs, and verifying that those services support the person's disability situation. The housing provider is not allowed to ask for the person's specific diagnosis, or request confidential medical records to support the request.

Group Homes

One of the most frequently litigated areas of Fair Housing law is the question of group homes and similar living arrangements. Group homes exist for many reasons, including providing living arrangements for persons with developmental disabilities. In these homes, disabled persons can live with a large degree of independence, but still access the services they need to manage their disabilities. Such living situations provide important advantages over institutional settings in providing healthier and more independent living options for the residents.

Unfortunately, many communities object strenuously when a group home is proposed for a neighborhood. The "Not in My Back Yard" attitude often arises in these situations, and town officials and community members sometimes will use zoning laws or other legal means to prevent or discourage group homes from coming into a community. There have been many court cases regarding attempts to deny group homes permits to build or operate. In virtually all cases, the courts have ruled that a municipality may not prevent such homes from being established.

Vermont law also specifically requires that group homes be permitted by municipalities, with some guidelines. Specifically, 24 V.S.A. §4412(1)(G) states: "A residential care home or group home to be operated under state licensing or registration, serving not more than eight persons who have a handicap or disability as defined in 9 V.S.A. § 4501, shall be considered by right to constitute a permitted single-family residential use of property, except that no such home shall be so considered if it is located within 1,000 feet of another existing or permitted such home." In other words, group homes of eight or fewer disabled persons must be treated under local zoning laws as single family homes, and be permitted to operate within areas of a town zoned for single-family use. This provision ensures that group homes for persons with disabilities may operate as integral parts of a residential community, as envisioned under Olmstead.



Direct Threat

Vermont's Fair Housing law allows landlords to "establish and enforce legitimate business practices necessary to protect and manage the rental property." This provision relates to a provision of the Americans with Disabilities Act that permits a facility to exclude a person with a disability if that person "poses a direct threat to the health or safety of others." In the housing context, this statutory language has been interpreted by courts to mean that landlords may, in some circumstances, evict or refuse to rent to a disabled person based on credible information that the person has posed a threat to others, or is likely to do so. Examples of such threats include acts of violence or threats of violence toward other tenants, acts or threats of property damage, failure to maintain the property in a reasonable condition, or failure to remove health and safety hazards. The statute indicates that the threat to others must be significant, and must be based on factual information, not speculation. So, for example, a landlord may not refuse to rent to a person with a developmental disability because the landlord assumes that the disabled person will not be able to keep a clean house or will cause property damage. The exclusion can only be justified by actual incidents, either in the current dwelling or in previous dwellings.

Importantly, before such an exclusion can take place, the land-

CURRENT HUMAN RIGHTS COMMISSION CASES

The following is a listing of some cases that have recently come before the Vermont Human Rights Commission that have been released to the public. In each of the following cases, the Commission has reached a settlement with the parties, either before the investigation determined whether or not illegal discrimination occurred or after the Commission made a determination that unlawful discrimination occurred.

Vivienne Wakefield and Shirley Manley v. EJL Management, Inc.

In this case, the Commission determined that E.J.L. Management, Inc. illegally discriminated against the Charging Parties because of their disabilities. Ms. Wakefield and Ms. Manley both had reserved parking spaces near their apartments because of mobility impairments. According to the investigation, on two occasions the signs marking the reserved spaces were removed by the management company. On the second occasion, the signs were removed even though the parties had documents in their files stating that they were entitled to the reserved spaces. The signs were eventually returned, but only after an initial refusal and a delay of several months. After extensive negotiations, the cases settled with an agreement that E.J.L. management would keep the parking signs in place, and would install entranceway ramps for Ms. Manley and Ms. Wakefield. E.J.L. also agreed to write letters of apology to the parties, and to develop and implement a comprehensive non-discrimination policy, with a focus on issues regarding persons with disabilities. E.J.L. will also pay over \$15,000 in compensation to the parties and to Vermont Legal Aid, which represented Ms. Manley and Ms. Wakefield.

Deborah Cornick Kelly v. Sisters and Brothers Investment Group

Ms. Cornick Kelly filed a complaint alleging that her neighbor made discriminatory and threatening remarks based on her race and color, and that on several occasions he took actions intended to threaten or intimidate her. The Commission determined that her landlord, Sisters and Brothers Investment Group, was on notice of the harassment, and did not take sufficient steps to stop the harassment or to ensure the removal of the neighbor or the safety of the tenant. The

parties subsequently came to a settlement agreement, in which Sisters and Brothers Investment Group continues to deny any wrongdoing, but agrees to provide information regarding its discrimination policy to its employees, and give Ms. Cornick Kelly a payment of \$7500.

Mary Daniels v. Jean Wickart

In this case, the Commission determined that Ms. Wickart, a landlord, refused to rent an upstairs apartment to Ms. Daniels and her family because Ms. Daniels' son is autistic, and she was fearful that he would fall and hurt himself. The Commission also determined that Ms. Wickart made a discriminatory statement regarding renting the second floor apartment to Ms. Daniels and her family. The case has settled with an agreement by Ms. Wickart to pay Ms. Daniels, as guardian of her son, \$2500, and to implement a non-discrimination policy for her rental apartments.

Winnifred Haley v. S. L. Moore Realty

Ms. Haley charged that her landlord, S. L. Moore Realty, failed to respond to her request for a reasonable accommodation to allow her to install a ramp at her own expense to allow her children, who have disabilities, access into their home. The respondent claimed that it never objected to her installing the ramp. The Commission made no findings in the case. The parties agreed to settle with a specific agreement that Ms. Haley would be allowed to install the ramp, and that the Human Rights Commission would provide information to S. L. Moore Realty regarding requirements for responding to reasonable accommodation requests under the Fair Housing Act.

Lila Rowell v. Vermont State Housing Authority

Ms. Rowell, who has a mobility impairment, charged that the Vermont State Housing Authority denied her request to make several modifications to her apartment to make it more accessible. The Vermont State Housing Authority claimed that the apartment was already accessible. The Commission made no findings in the case. The parties agreed to settle the claim in a document that gives Ms. Rowell permission to make several modifications to the apartment at her own expense, including installing a cover and a railing for her back deck area.

ON-LINE RESOURCES FOR FAIR HOUSING

There are many on-line resources for information about Fair Housing issues. Here are some useful web sites that will provide you with information and instruction about Fair Housing and related issues. Please also see the Directory of Vermont Fair Housing Organizations in this issue of the Fair Housing News, which lists the web addresses for those agencies. There are also numerous web pages for state and local Fair Housing organizations and agencies. Just type "Fair Housing" into any search engine to locate these resources.

National Fair Housing Advocate On-Line — www.fairhousing.com
News, resources, cases, statutes and a lot more information about Fair Housing issues across the country.

National Fair Housing Alliance — www.nationalfairhousing.org
An organization devoted to promoting Fair Housing laws nationwide.

Fair Housing Law — www.fairhousinglaw.org
A multi-language site with information about Fair Housing law and enforcement resources.

National Association of Realtors Field Guide to Fair Housing
www.realtor.org/libweb.nsf/pages/fg705
A guide to Fair Housing specifically aimed toward realtors.

Vermont Department of Housing and Community Affairs Fair Housing Page — www.dhca.state.vt.us/Housing/fairhousing.htm
A discussion of Fair Housing as it applies to Vermont communities and municipalities.

Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity — www.hud.gov/offices/fheo/index.cfm
Connects to HUD resources about enforcement of federal Fair Housing laws.

Federal Fair Housing Act — www.usdoj.gov/crt/housing/title8.htm
The text of the federal Fair Housing Act.

lord must first inquire whether there are any accommodations, policy changes or other steps that may be taken to mitigate the threat short of excluding the tenant. For example, in a New Hampshire case, a developmentally disabled tenant failed to clean up after his dog when the dog defecated on the lawn of the apartment complex. The landlord was allowed to evict the tenant, but only because the landlord had made several attempts to work with the tenant to solve the problem, and offered the tenant assistance in cleaning up the mess. The landlord only started eviction proceedings when these attempts had failed to solve the problem. In other words, if the landlord learns of a direct threat to the health or safety of other tenants or the property, and has information that the threat is related to the person's disability, then the landlord should make a good-faith effort to find ways to

solve the problem short of exclusion. If the problem persists after a reasonable attempt to address the concern, then the disabled person may be excluded from the dwelling.

Persons with developmental disabilities must be able to live in the least restrictive setting that their disability permits, and in many cases this means housing within a general housing market. This situation allows for greater independence and freedom for this segment of the population, but also creates situations where discrimination and harassment may occur. By acting proactively, housing providers, disabled persons, their families and supporters can help to prevent potential conflicts before they happen, and can also work to enforce the Fair Housing laws to create equal opportunity for all persons to obtain and enjoy a safe home environment.

ORGANIZATION PROFILE: VERMONT LEGAL AID, INC.

Vermont Legal Aid, Inc. (VLA) is a statewide, private non-profit organization that provides civil legal assistance to individuals who are poor, elderly and who have disabilities. Vermont Legal Aid, Inc., has been a statewide provider of free civil legal assistance to low-income Vermonters since 1968. A 15 member board of directors, with members from each county, governs and sets the policy. The board is composed of 9 members who are attorneys, 5 client representatives and one at-large member.

For nearly 35 years, VLA has excelled at providing high quality advocacy to poor and disadvantaged individuals and families throughout rural Vermont. VLA has a staff of 70 organized into seven project teams of attorneys, paralegals, and support staff. Through a network of six offices statewide, Vermont Legal Aid provides services to a diverse group of low-income individuals, including many who have limited English proficient (LEP) or who are members of the Deaf community requiring ASL (American Sign Language) interpretation.

The Poverty Law Project (PLP) assists low-income clients with civil legal problems. The legal assistance is focused on the basic necessities of life including housing, income, health care, and freedom from domestic violence. The PLP has extensive experience defending eviction actions brought against persons because of their protected status. Examples include evictions due to the behavior of a disabled child; tenants with children who are being evicted because of lead paint; or evictions of tenants with disabilities who have a support animal. The PLP has recently secured two fair housing grants from HUD, which are described in more detail below, and will allow it to engage in more affirmative fair housing enforcement cases in the future.

The Disability Law Project (DLP) of VLA receives much of its funding through the State's Protection and Advocacy System. The DLP provides legal assistance to children and adults with developmental and other disabilities. The DLP has formed several key alliances with community-based organizations to more effectively advocate for individuals with disabilities.

The Senior Citizens Law Project (SCLP) assists people over 60 with their civil legal problems. The SCLP works in partnership with the staff of local Councils on Aging to protect the rights of low-income elderly persons to live independently. The SCLP has experience effectively advocating for reasonable accommodations or modifications, to enable seniors with disabilities to "age in place" and remain in their own homes.

From 2000-2003, VLA was a subcontractor under a Private Enforcement Initiative (PEI) grant through the Fair Housing Project of Champlain Valley Office of Economic Opportunity (CVOEO). As of October 1, 2005, Vermont Legal Aid has received two Fair Housing Organizations Initiatives (FHOI) grants from HUD to provide private enforcement of fair housing laws including the set up and operation of a testing program that will conduct both complaint and audit-based testing. The FHOI grants were granted to VLA through two sponsor-

ing agencies over a multi-year period. The purpose of the grants is for the sponsoring agencies to assist the sponsored agency (VLA) in becoming a qualified fair housing organization (QFHO) over the term of the two grants. At the conclusion of the three years, VLA will be a QFHO and can apply directly to HUD for fair housing enforcement money in the future.

Under the first grant, the Fair Housing Council of Central New York (FHCCNY) will sponsor VLA over an initial 18-month period and then, under the second grant, the Housing Discrimination Project (HDP) of Holyoke (Massachusetts) will assist VLA over a second 18-month period. These grants will bring substantial additional enforcement resources into the State of Vermont over the three year period. Under the Fair Housing Initiatives subgrant from the Fair Housing Project of CVOEO, VLA litigated a number of complex cases. In 2002, VLA successfully represented a community action agency in a federal civil rights case against the Town of St. Johnsbury. The community action agency filed an application for a zoning permit to open a group home for women in recovery. Reacting to the fears of some neighbors, the Town denied the permit and blocked the opening of the home. VLA sought relief in federal court. Shortly thereafter, the Town settled with the community action agency and allowed the group home to open and offer housing to women in recovery.

In April, 2003, VLA settled a federal case for a young African-American mother. A large Burlington landlord refused to rent to this woman, telling her that it was because she was a teenage mother. The complainant was a qualified tenant. The landlord's refusal to rent to her resulted in several months of homelessness for her and her child. This case was settled and the landlord agreed: (1) to pay a total monetary award of \$13,250; (2) not to discriminate on the basis of any protected class in the future; and (3) to include the phrase "equal housing provider" on all printed rental housing advertisements.

VLA also represented a victim of domestic violence in a federal lawsuit. She was battered by her husband, and had to flee her home and call the police. When the police arrived her husband was arrested and she obtained a temporary restraining order. Within 72 hours, her landlord sent her a letter terminating her tenancy because of the violence. The lawsuit settled after a ruling was obtained on summary judgment that eviction of a victim of domestic violence would qualify as gender discrimination under the Fair Housing Act. This ruling is believed to be the first in the nation that recognizes this connection and will be useful in protecting the fair housing rights of other innocent victims of domestic violence.

As these examples show, Vermont Legal Aid has a rich history of protecting the fair housing rights of Vermonters and expects to continue to do so under its new fair housing organizations initiative grants. Clients who believe they have been subjected to discrimination in housing should call 1-800-889-2047.

CONTACT US!

The Vermont Fair Housing News is published twice annually, in the spring and fall.
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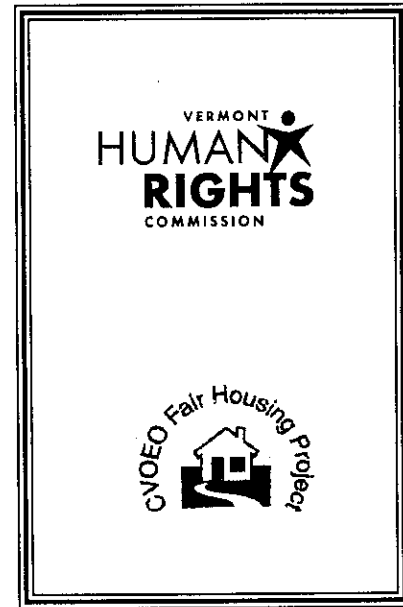
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